

# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 03B of 09



The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

**2009 LRB-0150**

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1       **SECTION 68.** 48.32 (1) (c) 3. of the statutes is repealed.

2       **SECTION 69.** 48.33 (4) (d) of the statutes is created to read:

3       48.33 (4) (d) If the agency knows or has reason to know that the child is an  
4       Indian child, a description of any efforts undertaken to determine whether the child  
5       is an Indian child; specific information showing that continued custody of the child  
6       by the parent or Indian custodian is likely to result in serious emotional or physical  
7       damage to the child under s. 48.028 (4) (d) 1.; specific information showing that the  
8       county department, department in a county having a population of 500,000 or more,  
9       or agency primarily responsible for providing services to the child has made active  
10      efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that  
11      those efforts have proved unsuccessful; a statement as to whether the out-of-home  
12      care placement recommended is in compliance with the order of placement  
13      preference under s. 48.028 (7) (b); and, if the recommended placement is not in  
14      compliance with that order, specific information showing good cause for departing  
15      from that order.

or, if applicable, (c)

s. 48.028(7)

NOTE: The DHFS draft requires the court report to set forth any response by the Indian tribe regarding the interest of the tribal court in exercising jurisdiction. Under 25 USC 1911 (b), however, the remedy for a tribe that wishes to exercise jurisdiction is not to express interest to the agency. Rather, the tribe's remedy is to petition for transfer of jurisdiction. Accordingly, this draft does not require a court report to set forth the tribe's interest in exercising jurisdiction.

~~The DHFS draft also requires documentation that the placement preferences were followed. That documentation, however, is included in the permanency plan, which is already included in the court report under s. 48.33 (4) (a). Accordingly, this draft does not repeat that requirement in s. 48.33 (4) (d).~~

16      **SECTION 70.** 48.335 (3j) of the statutes is created to read:

17      48.335 (3j) At hearings under this section involving an Indian child, if the  
18      agency, as defined in s. 48.38 (1) (a), is recommending placement of the Indian child  
19      in a foster home, treatment foster home, group home, or residential care center for

1 children and youth or in the home of a relative other than a parent, the agency shall  
2 present as evidence specific information showing all of the following:

3 (a) That continued custody of the Indian child by the parent or Indian custodian  
4 is likely to result in serious emotional or physical damage to the Indian child under  
5 s. 48.028 (4) (d) 1.

6 (b) That the county department, the department in a county having a  
7 population of 500,000 or more, or the agency primarily responsible for providing  
8 services to the Indian child has made active efforts under s. 48.028 (4) (d) 2. to  
9 prevent the breakup of the Indian family and that those efforts have proved  
10 unsuccessful.

11 (c) That the placement recommended is in compliance with the order of  
12 placement preference under s. 48.028 (7) (b), or, if that placement is not in compliance  
13 with that order, good cause for departing from that order.

14 **SECTION 71.** 48.345 (3) (intro.) of the statutes is amended to read:

15 48.345 (3) (intro.) Designate Subject to sub. (3m), designate one of the following  
16 as the placement for the child:

17 **SECTION 72.** 48.345 (3m) of the statutes is created to read:

18 48.345 (3m) (a) Subject to s. 48.028 (7) (c) ~~to (3)~~, if the child is an Indian child  
19 who is being placed in an out-of-home care placement, as defined in s. 48.028 (2) (e),  
20 designate one of the placements listed in s. 48.028 (7) (b) 1. to 4. as the placement for  
21 the Indian child, in the order of preference listed.

22 **SECTION 73.** 48.355 (2) (b) 6v. of the statutes is created to read:

23 48.355 (2) (b) 6v. If the child is an Indian child who is placed outside the home,  
24 a finding supported by clear and convincing evidence, including the testimony of one  
25 or more qualified expert witnesses, that continued custody of the Indian child by the

parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and a finding supported by clear and convincing evidence as to whether the county department, department in a county having a population of 500,000 or more, or agency primarily responsible for providing services under a court order has made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

**SECTION 74.** 48.355 (2) (d) of the statutes is amended to read:

48.355 (2) (d) The court shall provide a copy of a dispositional order relating to a child in need of protection or services to the child's parent, guardian, legal custodian, or trustee, to the child through the child's counsel or guardian ad litem and, to the child's court-appointed special advocate, and, if the child is an Indian child, to the Indian child's Indian custodian and tribe. The court shall provide a copy of a dispositional order relating to an unborn child in need of protection or services to the expectant mother, to the unborn child through the unborn child's guardian ad litem and, if the expectant mother is a child, to her, to the parent, guardian, legal custodian, or trustee of a child expectant mother, and, if the expectant mother is an Indian child or if the unborn child, when born may be an Indian child, to the expectant mother's Indian custodian and tribe or to the Indian tribe in which the unborn child may be eligible for membership when born.

**SECTION 75.** 48.355 (2c) (title) of the statutes is amended to read:

48.355 (2c) (title) REASONABLE EFFORTS AND ACTIVE EFFORTS STANDARDS.

**SECTION 76.** 48.355 (2c) (c) of the statutes is created to read:

48.355 (2c) (c) When a court makes a finding under sub. (2) (b) 6v. as to whether the county department, department in a county having a population of 500,000 or more, or agency primarily responsible for providing services to an Indian child under

1 ~~a court order has made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup~~  
2 ~~of the Indian family, the court's consideration of active efforts shall include the~~  
3 ~~considerations listed under par. (a) 1. to 5., whether visitation schedules between the~~  
4 ~~Indian child and his or her parents or Indian custodian were implemented, unless~~  
5 ~~visitation was denied or limited by the court, whether the order of preference for~~  
6 ~~placement of the Indian child under s. 48.028 (7) (b) was followed, and whether the~~  
7 ~~services provided to the Indian child and his or her family were culturally responsive~~  
8 ~~to their needs.~~

9 **SECTION 77.** 48.355 (2d) (c) 1. of the statutes is renumbered 48.355 (2d) (c) and  
10 amended to read:

11 48.355 (2d) (c) If the court finds that any of the circumstances specified in  
12 under par. (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing  
13 under s. 48.38 (4m) within 30 days after the date of that finding to determine the  
14 permanency plan for the child. If a hearing is held under this subdivision, the agency  
15 responsible for preparing the permanency plan shall file the permanency plan with  
16 the court not less than 5 days before the date of the hearing.

17 **SECTION 78.** 48.355 (2d) (c) 2. of the statutes is repealed.

18 **SECTION 79.** 48.355 (2d) (c) 3. of the statutes is repealed.

19 **SECTION 80.** 48.357 (1) (am) 1g. of the statutes is created to read:

20 48.357 (1) (am) 1g. If the child is an Indian child, a notice under subd. 1. shall  
21 also contain specific information showing that continued custody of the Indian child  
22 by the parent or Indian custodian is likely to result in serious emotional or physical  
23 damage to the child under s. 48.028 (4) (d) 1., specific information showing that the  
24 agency primarily responsible for implementing the dispositional order has made  
25 active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family

Indian (custodian and tribe)

and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 48.028 (7) (b) and, if the new placement is not in compliance with that order, specific information showing good cause for departing from that order.

**SECTION 81.** 48.357 (1) (am) 1m. of the statutes is created to read:

48.357 (1) (am) 1m. If the child is an Indian child, notice under subd. 1. to the Indian child's parent shall be provided in the manner specified in s. 48.028 (4) (a). In like manner, the court shall also provide notice of the hearing, together with a copy of the request for the change in placement, to the Indian child's Indian custodian and tribe. No hearing on the request may be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

**SECTION 82.** 48.357 (1) (am) 2. of the statutes is amended to read:

48.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed special advocate, may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Except as provided in subd. 2m. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, or legal custodian, or Indian custodian, and the child, if 12 years of age or over, or the child expectant mother, if 12 years of age or over, her parent, guardian, or legal custodian, or Indian custodian, and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, sign written waivers of objection, except that changes in placement that

written waivers of objection  
are signed as follows: P a. By

• P 2m. Changes

and the child's tribe, if the child is an Indian child. P a. By  
and the child expectant mother's tribe, if she is an Indian child. P a. By

(plan) Sub. 1. and 1m.  
S. 48.028(7)

1 were authorized in the dispositional order may be made immediately if notice is  
 2 given as required under subd. 1. In addition, a hearing is not required for placement  
 3 changes authorized in the dispositional order except when an objection filed by a  
 4 person who received notice alleges that new information is available that affects the  
 5 advisability of the court's dispositional order. or if applicable, (c)

6 **SECTION 83.** 48.357 (1) (am) 3. of the statutes is amended to read:

7 48.357 (1) (am) 3. If the court changes the child's placement from a placement  
 8 outside the home to another placement outside the home, the change in placement  
 9 order shall contain one of the statements specified in under sub. (2v) (a) 2. If the court  
 10 changes the placement of an Indian child from a placement outside the home to  
 11 another placement outside the home, the change in placement order shall, in  
 12 addition, comply with the order of placement preference under s. 48.028 (7) (b) and  
 13 contain the findings under sub. (2v) (a) 4.

NOTE: The DHFS draft amends s. 48.355 (2m) to require the active efforts and serious harm findings to be made when changes in transitional placements are made. Section 48.355 (2m), however, provides that the procedures of s. 48.357 govern transitions. Accordingly, the amendments made to s. 48.357 by this draft will cover those findings and no amendment to s. 48.355 (2m) is necessary.

14 **SECTION 84.** 48.357 (1) (c) 1m. of the statutes is created to read:

15 48.357 (1) (c) 1m. If the child is an Indian child, a request under subd. 1. shall  
 16 also contain specific information showing that continued custody of the Indian child  
 17 by the parent or Indian custodian is likely to result in serious emotional or physical  
 18 damage to the child under s. 48.028 (4) (d) 1., specific information showing that the  
 19 agency primarily responsible for implementing the dispositional order has made  
 20 active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family  
 21 and that those efforts have proved unsuccessful, a statement as to whether the new  
 22 placement is in compliance with the order of placement preference under s. 48.028

or, if applicable,  
(c)

Indian custodian and tribe

(7) (b) and, if the new placement is not in compliance with that order, specific information showing good cause for departing from that order.

**SECTION 85.** 48.357 (1) (c) 2m. of the statutes is created to read:

48.357 (1) (c) 2m. If the child is an Indian child, notice under subd. 2. to the

Indian child's parent shall be provided in the manner specified in s. 48.028 (4) (a).

~~In like manner, the court shall also provide notice of the hearing, together with a copy of the request for the change in placement, to the Indian child's Indian custodian and tribe.~~

No hearing on the request may be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

**SECTION 86.** 48.357 (1) (c) 3. of the statutes is amended to read:

48.357 (1) (c) 3. If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., one of the statements ~~specified in~~ under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination ~~specified in~~ under sub. (2v) (a) 3. If the court changes the placement of an Indian child from a placement in the child's home to a placement outside the child's home, the change in placement order shall, in addition, comply with the order of placement preference under s. 48.028 (7) (b) and contain the findings under sub. (2v) (a) 4.

**SECTION 87.** 48.357 (2m) (a) of the statutes is amended to read:

or, if applicable, (c)

s. 48.028(7)



1           48.357 (2m) (a) The child, the parent, guardian, ~~or~~ legal custodian, or Indian  
2           custodian of the child, the expectant mother, the unborn child by the unborn child's  
3           guardian ad litem, or any person or agency primarily bound by the dispositional  
4           order, other than the person or agency responsible for implementing the order, may  
5           request a change in placement under this paragraph. The request shall contain the  
6           name and address of the new placement requested and shall state what new  
7           information is available that affects the advisability of the current placement. If the  
8           proposed change in placement would change the placement of a child placed in the  
9           child's home to a placement outside the child's home, the request shall also contain  
10          specific information showing that continued placement of the child in the home  
11          would be contrary to the welfare of the child and, unless any of the circumstances  
12          specified in under s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that  
13          the agency primarily responsible for implementing the dispositional order has made  
14          reasonable efforts to prevent the removal of the child from the home, while assuring  
15          that the child's health and safety are the paramount concerns. The request shall be  
16          submitted to the court. ~~In addition, the~~ The court may also propose a change in  
17          placement on its own motion.

18           **SECTION 88.** 48.357 (2m) (am) of the statutes is created to read:

19           48.357 (2m) (am) If the proposed change of placement would change the  
20          placement of an Indian child placed in the child's home to a placement outside the  
21          child's home, a request under par. (a) shall also contain specific information showing  
22          that continued custody of the Indian child by the parent or Indian custodian is likely  
23          to result in serious emotional or physical damage to the child under s. 48.028 (4) (d)  
24          1., specific information showing that the agency primarily responsible for  
25          implementing the dispositional order has made active efforts under s. 48.028 (4) (d)

or, if applicable, (c)

2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 48.028 (7) (b) and, if the new placement is not in compliance with that order, specific information showing good cause for departing from that order.

**SECTION 89.** 48.357 (2m) (b) of the statutes is amended to read:

48.357 (2m) (b) The court shall hold a hearing on the matter prior to ordering any change in placement requested or proposed under par. (a) if the request states that new information is available that affects the advisability of the current placement, unless. A hearing is not required if the requested or proposed change in placement involves any change in placement other than does not involve a change in placement of a child placed in the child's home to a placement outside the child's home and, written waivers of objection to the proposed change in placement are signed by all persons entitled to receive notice under sub. (1) (am) 1, other than a court-appointed special advocate, and the court approves. If a hearing is scheduled, not less than 3 days before the hearing the court shall notify the child, the parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, the child's court-appointed special advocate, all parties who are bound by the dispositional order, and, if the child is an Indian child, the Indian child's Indian custodian and tribe. If the child is the expectant mother of an unborn child under s. 48.133, the court shall also notify the unborn child by the unborn child's guardian ad litem, or, If the change in placement involves an adult expectant mother of an unborn child under s. 48.133, the court shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem, and all parties who are bound by the

Indian custodian, and tribe

dispositional order, at least 3 days prior to the hearing. A copy of the request or proposal for the change in placement shall be attached to the notice. If all of the parties consent, the court may proceed immediately with the hearing.

**SECTION 90.** 48.357 (2m) (bm) of the statutes is created to read:

48.357 (2m) (bm) If the proposed change in placement would change the placement of an Indian child placed in the child's home to a placement outside the child's home, notice under par. (b) to the Indian child's parent shall be provided in the manner specified in s. 48.028 (4) (a). ~~In like manner, the court shall also provide notice of the hearing, together with a copy of the request or proposal for the change in placement, to the Indian child's Indian custodian and tribe.~~ No hearing on the request or proposal may be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

**SECTION 91.** 48.357 (2m) (c) of the statutes is amended to read:

48.357 (2m) (c) If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings specified in under sub. (2v) (a) 1., one of the statements specified in under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances specified in under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination specified in under sub. (2v) (a) 3. If the court changes the placement of an Indian child from a placement in the child's home to a placement outside the child's home, the change in placement order shall, in addition, comply with the order of placement preference under s. 48.028 (7) (b) and contain the findings under sub. (2v) (a) 4.

s. 48.028 (7)

or, if applicable, (cc)

1           **SECTION 92.** 48.357 (2v) (a) 4. of the statutes is created to read:

2           48.357 (2v) (a) 4. If the change in placement order changes an Indian child's  
3 placement from a placement in the Indian child's home to a placement outside the  
4 Indian child's home, a finding supported by clear and convincing evidence, including  
5 the testimony of one or more qualified expert witnesses, that continued custody of  
6 the Indian child by the parent or Indian custodian is likely to result in serious  
7 emotional or physical damage to the child under s. 48.028 (4) (d) 1. and a finding  
8 supported by clear and convincing evidence that the agency primarily responsible for  
9 implementing the dispositional order has made active efforts under s. 48.028 (4) (d)  
10 2. to prevent the breakup of the Indian family and that those efforts have proved  
11 unsuccessful.

12           **SECTION 93.** 48.357 (2v) (c) 1. of the statutes is renumbered 48.357 (2v) (c) and  
13 amended to read:

14           48.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances  
15 specified in under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court  
16 shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding  
17 to determine the permanency plan for the child. ~~If a hearing is held under this~~  
18 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~  
19 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

20           **SECTION 94.** 48.357 (2v) (c) 2. of the statutes is repealed.

21           **SECTION 95.** 48.357 (2v) (c) 3. of the statutes is repealed.

22           **SECTION 96.** 48.363 (1) (a) of the statutes is amended to read:

23           48.363 (1) (a) A child, the child's parent, guardian ~~or~~, legal custodian, or Indian  
24 custodian, an expectant mother, an unborn child by the unborn child's guardian ad  
25 litem, any person or agency bound by a dispositional order, or the district attorney

1 or corporation counsel in the county in which the dispositional order was entered  
2 may request a revision in the order that does not involve a change in placement,  
3 including a revision with respect to the amount of child support to be paid by a  
4 parent, ~~or the.~~ The court may on its own motion also propose such a revision. The  
5 request or court proposal shall set forth in detail the nature of the proposed revision  
6 and what new information is available that affects the advisability of the court's  
7 disposition. The request or court proposal shall be submitted to the court. The court  
8 shall hold a hearing on the matter prior to any revision of the dispositional order if  
9 the request or court proposal indicates that new information is available which  
10 affects the advisability of the court's dispositional order, unless written waivers of  
11 objections to the revision are signed by all parties entitled to receive notice and the  
12 court approves.

13 **SECTION 97.** 48.363 (1) (b) of the statutes is amended to read:

14 48.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court  
15 shall notify the child, the child's parent, guardian, and legal custodian, all parties  
16 bound by the dispositional order, the child's foster parent, treatment foster parent,  
17 or other physical custodian described in s. 48.62 (2), the child's court-appointed  
18 special advocate, the district attorney or corporation counsel in the county in which  
19 the dispositional order was entered, and, if the child is an Indian child, the Indian  
20 child's Indian custodian and tribe. If the child is the expectant mother of an unborn  
21 child under s. 48.133, the court shall also notify the unborn child by the unborn  
22 child's guardian ad litem; ~~or.~~ If the proceeding involves an adult expectant mother  
23 of an unborn child under s. 48.133, the court shall notify the adult expectant mother,  
24 the unborn child through the unborn child's guardian ad litem, all parties bound by  
25 the dispositional order, and the district attorney or corporation counsel in the county

1 in which the dispositional order was entered, at least 3 days prior to the hearing. A  
2 copy of the request or proposal shall be attached to the notice. If all parties consent,  
3 the court may proceed immediately with the hearing. No revision may extend the  
4 effective period of the original order.

5 **SECTION 98.** 48.365 (1m) of the statutes is amended to read:

6 48.365 (1m) The parent, child, guardian, legal custodian, Indian custodian,  
7 expectant mother, unborn child by the unborn child's guardian ad litem, any person  
8 or agency bound by the dispositional order, the district attorney or corporation  
9 counsel in the county in which the dispositional order was entered, or the court on  
10 its own motion, may request an extension of an order under s. 48.355 including an  
11 order under s. 48.355 that was entered before the child was born. The request shall  
12 be submitted to the court ~~which~~ that entered the order. ~~No~~ An order under s. 48.355  
13 may be extended ~~except~~ only as as provided in this section.

14 **SECTION 99.** 48.365 (2) of the statutes is amended to read:

15 48.365 (2) No order may be extended without a hearing. The court shall ~~notify~~  
16 provide notice of the time and place of the hearing to the child, the child's parent,  
17 guardian, and legal custodian, all the parties present at the original hearing, the  
18 child's foster parent, treatment foster parent or other physical custodian described  
19 in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or  
20 corporation counsel in the county in which the dispositional order was entered and,  
21 if the child is an Indian child, the Indian child's Indian custodian and tribe. If the  
22 child is an expectant mother of an unborn child under s. 48.133, the court shall also  
23 notify the unborn child by the unborn child's guardian ad litem, or. If the extension  
24 hearing involves an adult expectant mother of an unborn child under s. 48.133, the  
25 court shall notify the adult expectant mother, the unborn child through the unborn

1 child's guardian ad litem, all the parties present at the original hearing, and the  
2 district attorney or corporation counsel in the county in which the dispositional order  
3 was entered, of the time and place of the hearing.

4 **SECTION 100.** 48.365 (2g) (b) 4. of the statutes is created to read:

5 48.365 (2g) (b) 4. If the child is an Indian child who is placed outside the home,  
6 specific information showing that active efforts under s. 48.028 (4) (d) 2. have been  
7 made to prevent the breakup of the Indian family and that those efforts have proved  
8 unsuccessful.

9 **SECTION 101.** 48.365 (2m) (a) 1. of the statutes is amended to read:

10 48.365 (2m) (a) 1. Any party may present evidence relevant to the issue of  
11 extension. If the child is placed outside of his or her home, the person or agency  
12 primarily responsible for providing services to the child shall present as evidence  
13 specific information showing that the person or agency has made reasonable efforts  
14 to achieve the goal of the child's permanency plan, unless return of the child to the  
15 home is the goal of the permanency plan and any of the circumstances specified in  
16 under s. 48.355 (2d) (b) 1. to 5. applies. If an Indian child is placed outside the home,  
17 the person or agency primarily responsible for providing services to the Indian child  
18 shall also present as evidence specific information showing that the person or agency  
19 has made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian  
20 family and that those efforts have proved unsuccessful.

21 1m. The judge shall make findings of fact and conclusions of law based on the  
22 evidence. The findings of fact shall include a finding as to whether reasonable efforts  
23 were made by the agency primarily responsible for providing services to the child to  
24 achieve the goal of the child's permanency plan, unless return of the child to the home  
25 is the goal of the permanency plan and the judge finds that any of the circumstances

1 ~~specified in under~~ s. 48.355 (2d) (b) 1. to 5. applies. If the child is an Indian child who  
2 is placed outside the home, the findings of fact shall also include a finding as to  
3 whether active efforts under s. 48.028 (4) (d) 2. were made to prevent the breakup  
4 of the Indian family and as to whether those efforts have proved unsuccessful. An  
5 order shall be issued under s. 48.355.

6 **SECTION 102.** 48.365 (2m) (a) 3. of the statutes is amended to read:

7 48.365 (2m) (a) 3. The judge shall make the findings ~~specified in under~~ subd.  
8 ~~1. 1m.~~ relating to reasonable efforts to achieve the goal of the child's permanency plan  
9 and the findings ~~specified in under~~ subd. 2. on a case-by-case basis based on  
10 circumstances specific to the child and shall document or reference the specific  
11 information on which those findings are based in the order issued under s. 48.355.  
12 An order that merely references subd. ~~1. 1m.~~ or 2. without documenting or  
13 referencing that specific information in the order or an amended order that  
14 retroactively corrects an earlier order that does not comply with this subdivision is  
15 not sufficient to comply with this subdivision.

16 **SECTION 103.** 48.365 (2m) (ad) 1. of the statutes is renumbered 48.365 (2m) (ad)  
17 and amended to read:

18 48.365 (2m) (ad) If the judge finds that any of the circumstances ~~specified in~~  
19 ~~under~~ s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold  
20 a hearing under s. 48.38 (4m) within 30 days after the date of that finding to  
21 determine the permanency plan for the child. ~~If a hearing is held under this~~  
22 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~  
23 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

24 **SECTION 104.** 48.365 (2m) (ad) 2. of the statutes is repealed.

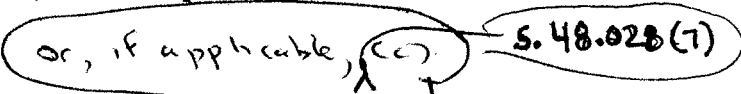
25 **SECTION 105.** 48.365 (2m) (ag) of the statutes is amended to read:



1           48.365 (2m) (ag) The court shall give a foster parent, treatment foster parent,  
2           or other physical custodian described in s. 48.62 (2) who is notified of a hearing under  
3           ~~par. (ad) 2. or sub. (2)~~ an opportunity to be heard at the hearing by permitting the  
4           foster parent, treatment foster parent, or other physical custodian to make a written  
5           or oral statement during the hearing, or to submit a written statement prior to the  
6           hearing, relevant to the issue of extension. A foster parent, treatment foster parent,  
7           or other physical custodian ~~described in s. 48.62 (2)~~ who receives notice of a hearing  
8           under ~~par. (ad) 2. or sub. (2)~~ and an opportunity to be heard under this paragraph  
9           does not become a party to the proceeding on which the hearing is held solely on the  
10          basis of receiving that notice and having the opportunity to be heard.

11           **SECTION 106.** 48.38 (4) (i) of the statutes is created to read:

12           48.38 (4) (i) If the child is an Indian child, all of the following:

13           1. The name, address, and telephone number of the Indian child's Indian  
14          custodian and tribe. 

15           2. A description of the remedial services and rehabilitation programs offered  
16          under s. 48.028 (4) (d) 2. in an effort to prevent the breakup of the Indian family.

17           3. A statement as to whether the Indian child's placement is in compliance with  
18          the order of placement preference specified in s. 48.028 (7) (b) and, if the placement  
19          is not in compliance with that order, an explanation for the departure from that  
20          order.

21           **SECTION 107.** 48.38 (4m) of the statutes is created to read:

22           48.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding  
23          under s. 48.21, 48.32, 48.355, 48.357, or 48.365 the court finds that any of the  
24          circumstances under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the  
25          court shall hold a hearing within 30 days after the date of that finding to determine

1 the permanency plan for the child. If a hearing is held under this paragraph, the  
2 agency responsible for preparing the permanency plan shall file the permanency  
3 plan with the court not less than 5 days before the date of the hearing.

4 (b) At least 10 days before the date of the hearing the court shall notify the child,  
5 any parent, guardian, and legal custodian of the child, and any foster parent,  
6 treatment foster parent, or other physical custodian described in s. 48.62 (2) of the  
7 child of the time, place, and purpose of the hearing.

8 (c) If the court knows or has reason to know that the child is an Indian child,  
9 notice under par. (b) to the Indian child's parent shall be provided in the manner  
10 specified in s. 48.028 (4) (a). In like manner, the court shall also notify the Indian  
11 child's Indian custodian and tribe. No hearing may be held under par. (a) until at  
12 least 10 days after receipt of the notice by the Indian child's parent, Indian custodian,  
13 and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the  
14 court shall grant a continuance of up to 20 additional days to enable the requester  
15 to prepare for the hearing.

16 (d) The court shall give a foster parent, treatment foster parent, or other  
17 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)  
18 an opportunity to be heard at the hearing by permitting the foster parent, treatment  
19 foster parent, or other physical custodian to make a written or oral statement during  
20 the hearing, or to submit a written statement prior to the hearing, relevant to the  
21 issues to be determined at the hearing. The foster parent, treatment foster parent,  
22 or other physical custodian does not become a party to the proceeding on which the  
23 hearing is held solely on the basis of receiving that notice and having the opportunity  
24 to be heard.

25 **SECTION 108.** 48.38 (5) (b) of the statutes is amended to read:

1           48.38 (5) (b) The court or the agency shall notify ~~the parents of the child, the~~  
2           child, if he or she is 12 years of age or older, ~~and; the child's parent, guardian, and~~  
3           legal custodian; the child's foster parent, the child's treatment foster parent, the  
4           operator of the facility in which the child is living, or the relative with whom the child  
5           is living; ~~and, if the child is an Indian child, the Indian child's Indian custodian and~~  
6           tribe of the date, time, and place of the review, of the issues to be determined as part  
7           of the review, and of the fact that they may have an opportunity to be heard at the  
8           review by submitting written comments not less than 10 working days before the  
9           review or by participating at the review. The court or agency shall notify the person  
10          representing the interests of the public, the child's counsel, the child's guardian ad  
11          litem, and the child's court-appointed special advocate of the date of the review, of  
12          the issues to be determined as part of the review, and of the fact that they may submit  
13          written comments not less than 10 working days before the review. The notices  
14          under this paragraph shall be provided in writing not less than 30 days before the  
15          review and copies of the notices shall be filed in the child's case record.

16           **SECTION 109.** 48.38 (5) (bm) of the statutes is created to read:

17           48.38 (5) (bm) If the child is an Indian child, notice under par. (b) to the Indian  
18          child's parent, Indian custodian, and tribe shall be provided in the manner specified  
19          in s. 48.028 (4) (a). No review may be held until at least 10 days after receipt of the  
20          notice by the Indian child's parent, Indian custodian, and tribe. On request of the  
21          Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance  
22          of up to 20 additional days to enable the requester to prepare for the review.

23           **SECTION 110.** 48.38 (5) (c) 8. of the statutes is created to read:

1 48.38 (5) (c) 8. If the child is an Indian child, whether active efforts under s.  
2 48.028 (4) (d) 2. were made by the agency to prevent the breakup of the Indian family  
3 ~~and~~ whether those efforts have proved unsuccessful

4 SECTION 111. 48.38 (5) (d) of the statutes is amended to read:

5 48.38 (5) (d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the  
6 permanency plan shall, at least 5 days before a review by a review panel, provide to  
7 each person appointed to the review panel, the child's parent, guardian, and legal  
8 custodian, the person representing the interests of the public, the child's counsel, the  
9 child's guardian ad litem and, the child's court-appointed special advocate, and, if  
10 the child is an Indian child, the Indian child's Indian custodian and tribe a copy of  
11 the permanency plan and any written comments submitted under par. (b).  
12 Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person  
13 representing the interests of the public, the child's counsel, the child's guardian ad  
14 litem and, the child's court-appointed special advocate, and, if the child is an Indian  
15 child, the Indian child's Indian custodian and tribe may have access to any other  
16 records concerning the child for the purpose of participating in the review. A person  
17 permitted access to a child's records under this paragraph may not disclose any  
18 information from the records to any other person.

19 SECTION 112. 48.38 (5) (e) of the statutes is amended to read:

20 48.38 (5) (e) Within 30 days, the agency shall prepare a written summary of  
21 the determinations under par. (c) and shall provide a copy to the court that entered  
22 the order; the child or the child's counsel or guardian ad litem; the person  
23 representing the interests of the public; the child's parent ~~or~~, guardian, or legal  
24 custodian; the child's court-appointed special advocate and; the child's foster parent,  
25 the child's treatment foster parent, or the operator of the facility where the child is

cause for departure from that order  
and whether the Indian child's placement is in compliance with the order & placement preference under s. 48.028 (7) (a)  
if applicable s. 48.028 (7) (c) is not in compliance with that order whether there is good

1 living; and, if the child is an Indian child, the Indian child's Indian custodian and  
2 tribe.

3 **SECTION 113.** 48.38 (5m) (b) of the statutes is amended to read:

4 48.38 (5m) (b) Not less than 30 days before the date of the hearing, the court  
5 shall notify the child; the child's parent, guardian, and legal custodian; the child's  
6 foster parent or treatment foster parent, the operator of the facility in which the child  
7 is living, or the relative with whom the child is living; the child's counsel, the child's  
8 guardian ad litem, and the child's court-appointed special advocate; the agency that  
9 prepared the permanency plan; ~~and the person representing the interests of the~~  
10 public; and, if the child is an Indian child, the Indian child's Indian custodian and  
11 tribe of the date, time, and place of the hearing.

12 **SECTION 114.** 48.38 (5m) (bm) of the statutes is created to read:

13 48.38 (5m) (bm) If the child is an Indian child, notice under par. (b) to the Indian  
14 child's parent, Indian custodian, and tribe shall be provided in the manner specified  
15 in s. 48.028 (4) (a). No hearing under par. (a) may be held until at least 10 days after  
16 receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On  
17 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant  
18 a continuance of up to 20 additional days to enable the requester to prepare for the  
19 hearing.

NOTE: Section 48.38 (5m) (c), as affected by the DHFS draft, provides that an  
Indian custodian and tribe do not become parties to the proceeding. Actually, 25 USC  
1911 (c) grants the Indian custodian and tribe the right to intervene at any point in a  
proceeding involving an Indian child.

20 **SECTION 115.** 48.38 (5m) (d) of the statutes is amended to read:

21 48.38 (5m) (d) At least 5 days before the date of the hearing the agency that  
22 prepared the permanency plan shall provide a copy of the permanency plan and any  
23 written comments submitted under par. (c) to the court, to the child's parent,

1 guardian, and legal custodian, to the person representing the interests of the public,  
2 to the child's counsel or guardian ad litem, and to the child's court-appointed special  
3 advocate, and, if the child is an Indian child, to the Indian child's Indian custodian  
4 and tribe. Notwithstanding s. 48.78 (2) (a), the person representing the interests of  
5 the public, the child's counsel or guardian ad litem, and the child's court-appointed  
6 special advocate, and, if the child is an Indian child, the Indian child's Indian  
7 custodian and tribe may have access to any other records concerning the child for the  
8 purpose of participating in the review. A person permitted access to a child's records  
9 under this paragraph may not disclose any information from the records to any other  
10 person.

11 **SECTION 116.** 48.38 (5m) (e) of the statutes is amended to read:

12 48.38 (5m) (e) After the hearing, the court shall make written findings of fact  
13 and conclusions of law relating to the determinations under sub. (5) (c) and shall  
14 provide a copy of those findings of fact and conclusions of law to the child; the child's  
15 parent, guardian, and legal custodian; the child's foster parent or treatment foster  
16 parent, the operator of the facility in which the child is living, or the relative with  
17 whom the child is living; the child's court-appointed special advocate; the agency  
18 that prepared the permanency plan; and the person representing the interests of the  
19 public; and, if the child is an Indian child, the Indian child's Indian custodian and  
20 tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case  
21 basis based on circumstances specific to the child and shall document or reference  
22 the specific information on which those findings are based in the findings of fact and  
23 conclusions of law prepared under this paragraph. Findings of fact and conclusions  
24 of law that merely reference sub. (5) (c) 7. without documenting or referencing that  
25 specific information in the findings of fact and conclusions of law or amended

xxxx Note: Under s. 227.11(2), DHS has <sup>(the)</sup> inherent authority to promulgate rules interpreting the statutes administered by DHS. Accordingly, we need to mention rulemaking only if you findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

**SECTION 117.** 48.38 (6) (cm) of the statutes is created to read:

48.38 (6) (cm) Standards for active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of an Indian child's family.

**SECTION 118.** 48.41 (2) (e) of the statutes is created to read:

48.41 (2) (e) In the case of an Indian child, the consent is given as provided in s. 48.028 (5) (b).

**SECTION 119.** 48.415 (2) (a) 2. a. of the statutes is amended to read:

48.415 (2) (a) 2. a. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which that takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother, and other relevant circumstances of the case.

**SECTION 120.** 48.415 (2) (a) 2. b. of the statutes is amended to read:

48.415 (2) (a) 2. b. That In the case of an Indian child, that the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable ~~an active~~ effort to provide the services ordered by the court. In this subdivision, "active effort" means reasonable effort, as defined in subd. 2. a., that also takes into consideration the prevailing social and cultural characteristics and way of life of the Indian child's tribe and that involves

active efforts under s. 48.028 (4) (e) 2.

Insert the legislature to require DHS to promulgate rules

Insert 659

1 ~~and uses the available resources of that tribe, Indian social services agencies, and~~  
2 ~~individual Indian caregivers.~~

3 **SECTION 121.** 48.417 (2) (cm) of the statutes is created to read:

4 48.417 (2) (cm) In the case of an Indian child, the agency primarily responsible  
5 for providing services to the Indian child and the family under a court order, if  
6 required under s. 48.355 (2) (b) 6v. to make active efforts under s. 48.028 (4) (d) 2. to  
7 prevent the breakup of the Indian family, has not provided to the Indian child's  
8 family, consistent with the time period in the child's permanency plan, the services  
9 necessary to prevent the breakup of the Indian family.

10 **SECTION 122.** 48.42 (1) (d) of the statutes is amended to read:

11 48.42 (1) (d) A statement of whether the child may be subject to the federal  
12 ~~Indian child welfare act~~ Child Welfare Act, 25 USC 1911 to 1963, and, if the child may  
13 be subject to that act, the names of the child's Indian custodian, if any, and tribe, if  
14 known.

15 **SECTION 123.** 48.42 (1) (e) of the statutes is created to read:

16 48.42 (1) (e) If the child is an Indian child, reliable and credible information  
17 showing that continued custody of the child by the child's parent or Indian custodian  
18 is likely to result in serious emotional or physical damage to the child under s. 48.028  
19 (4) (e) 1. and reliable and credible information showing that the agency has made  
20 active efforts under s. 48.028 (4) (e) 2. to prevent the breakup of the Indian family  
21 and that those efforts have proved unsuccessful.

22 **SECTION 124.** 48.42 (2) (c) of the statutes is amended to read:

23 48.42 (2) (c) The guardian, guardian ad litem ~~and, legal custodian, and Indian~~  
24 custodian of the child.

25 **SECTION 125.** 48.42 (2g) (ag) of the statutes is created to read:



1           48.42 (2g) (ag) If the petitioner knows or has reason to know that the child is  
2           an Indian child, the petitioner shall cause the summons and petition to be served on  
3           the Indian child's parent and Indian custodian in the manner specified in s. 48.028  
4           (4) (a). In like manner, the petitioner shall also notify the Indian child's tribe of all  
5           hearings on the petition. The first notice to an Indian child's tribe shall be written,  
6           shall have a copy of the petition attached to it, and shall state the nature, location,  
7           date, and time of the initial hearing. No hearing may be held on the petition until  
8           at least 10 days after receipt of notice of the hearing by the Indian child's parent,  
9           Indian custodian, and tribe. On request of the Indian child's parent, Indian  
10          custodian, or tribe, the court shall grant a continuance of up to 20 additional days  
11          to enable the requester to prepare for the hearing.

12           **SECTION 126.** 48.42 (4) (a) of the statutes is amended to read:

13           48.42 (4) (a) *Personal service.* Except as provided in this paragraph and, par.  
14           (b), and sub. (2g) (ag), a copy of the summons and petition shall be served personally  
15           upon the parties specified in sub. (2), if known, at least 7 days before the date of the  
16           hearing. Service of summons is not required if the party submits to the jurisdiction  
17           of the court. Service upon parties who are not natural persons and upon persons  
18           under a disability shall be as prescribed in s. 801.11.

19           **SECTION 127.** 48.422 (1) of the statutes is amended to read:

20           48.422 (1) The Except as provided in s. 48.42 (2g) (ag), the hearing on the  
21           petition to terminate parental rights shall be held within 30 days after the petition  
22           is filed. At the hearing on the petition to terminate parental rights the court shall  
23           determine whether any party wishes to contest the petition and inform the parties  
24           of their rights under sub. (4) and s. 48.423.

25           **SECTION 128.** 48.422 (2) of the statutes is amended to read:

1           48.422 (2) If Except as provided in s. 48.42 (2g) (ag), if the petition is contested  
2 the court shall set a date for a fact-finding hearing to be held within 45 days of after  
3 the hearing on the petition, unless all of the necessary parties agree to commence  
4 with the hearing on the merits immediately.

5           **SECTION 129.** 48.422 (6) (a) of the statutes is amended to read:

6           48.422 (6) (a) In the case of a nonmarital child who is not adopted or whose  
7 parents do not subsequently intermarry under s. 767.803 and for whom paternity  
8 has not been established, or for whom a declaration of paternal interest has not been  
9 filed under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42  
10 (1g) (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g)  
11 (b) is mailed, the court shall hear testimony concerning the paternity of the child.  
12 Based on the testimony, the court shall determine whether all interested parties who  
13 are known have been notified under s. 48.42 (2) and (2g) (ag). If not, the court shall  
14 adjourn the hearing and order appropriate notice to be given.  
15

16           **SECTION 130.** 48.423 (1) of the statutes is amended to read:

17           **48.423 (1) RIGHTS TO PATERNITY DETERMINATION.** If a person appears at the  
18 hearing and claims that he is the father of the child, the court shall set a date for a  
19 hearing on the issue of paternity ~~or, if.~~ If the child is an Indian child or if it appears  
20 to the court that the determination of paternity may result in a finding that the child  
21 is an Indian child, the court shall cause notice of the hearing on the issue of paternity  
22 to be provided to the Indian child's parent, Indian custodian, and tribe under s. 48.42  
23 (2g) (ag), and the hearing may not be held until at least 10 days after receipt of notice  
24 under s. 48.42 (2g) (ag) by the Indian child's parent, Indian custodian, and tribe. On  
25 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant  
a continuance of up to 20 additional days to enable the requester to prepare for the

1 hearing. If all parties agree, the court may immediately commence hearing  
2 testimony concerning the issue of paternity. The court shall inform the person  
3 claiming to be the father of the child of any right to counsel under s. 48.23. The person  
4 claiming to be the father of the child must prove paternity by clear and convincing  
5 evidence. A person who establishes his paternity of the child under this section may  
6 further participate in the termination of parental rights proceeding only if the person  
7 meets the conditions specified in sub. (2) or meets a condition specified in s. 48.42 (2)  
8 ~~or~~ (b) or (bm).

9 **SECTION 131.** 48.424 (1) of the statutes is amended to read:

10 48.424 (1) The purpose of the fact-finding hearing is to determine ~~whether~~  
11 ~~grounds exist for the termination of parental rights in those cases where the~~  
12 ~~termination in cases in which the petition was contested at the hearing on the~~  
13 petition under s. 48.422 whether grounds exist for termination of parental rights  
14 and, in contested cases in which the child is an Indian child, to determine whether  
15 grounds exist for termination of parental rights and whether the allegations  
16 specified in s. 48.42 (1) (e) are proved.

17 **SECTION 132.** 48.424 (2) (intro.) of the statutes is amended to read:

18 48.424 (2) (intro.) The fact-finding hearing shall be conducted according to the  
19 procedure specified in s. 48.31 ~~except that~~ as follows:

20 **SECTION 133.** 48.424 (2) (a) of the statutes is amended to read:

21 48.424 (2) (a) The court may exclude the child from the hearing; ~~and,~~

22 **SECTION 134.** 48.424 (3) of the statutes is amended to read:

23 48.424 (3) If the facts are determined by a jury, the jury may only decide  
24 whether any grounds for the termination of parental rights have been ~~proven~~ proved  
25 and, in the case of an Indian child, whether the allegations specified in s. 48.42 (1)

1 (e) have been proved. The court shall decide what disposition is in the best interest  
2 of the child.

NOTE: In the DHFS draft likelihood of serious harm is listed in the standards and factors in s. 48.426 relating to disposition. It appears, however, that likelihood of serious harm would be based on the facts, i.e., present conduct predicts future behavior, and goes to the issue of unfitness, which is determined at the fact-finding, not dispositional, stage.

3 **SECTION 135.** 48.424 (4) (intro.) of the statutes is amended to read:

4 48.424 (4) (intro.) If grounds for the termination of parental rights are found  
5 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall  
6 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed  
7 immediately to hear evidence and motions related to the dispositions enumerated in  
8 s. 48.427. The Except as provided in s. 48.42 (2g) (ag), the court may delay making  
9 the disposition and set a date for a dispositional hearing no later than 45 days after  
10 the fact-finding hearing if any of the following apply:

11 **SECTION 136.** 48.424 (4) (a) of the statutes is amended to read:

12 48.424 (4) (a) All parties to the proceeding agree; ~~or,~~

13 **SECTION 137.** 48.424 (5) of the statutes is amended to read:

14 48.424 (5) If the court delays making a permanent disposition under sub. (4),  
15 it may transfer temporary custody of the child to an agency for placement of the child  
16 until the dispositional hearing. Placement of an Indian child under this subsection  
17 shall comply with the order of placement preference under s. 48.028 (7) (b).

18 **SECTION 138.** 48.425 (1) (cm) of the statutes is created to read:

19 48.425 (1) (cm) If the child is an Indian child, specific information showing that  
20 continued custody of the child by the parent or Indian custodian is likely to result in  
21 serious emotional or physical damage to the child under s. 48.028 (4) (e) 1. and, if the  
22 Indian child has previously been adjudged to be in need of protection or services,  
23 specific information showing that the agency or person responsible for providing

S. 48.028 (7)

or, if applicable, (c)

Insert  
70-12  
70-12

Insert  
70-17  
70-17

1 services to the Indian child and his or her family has made active efforts under s.  
2 48.028 (4) (e) 2. to prevent the breakup of the Indian family and that those efforts  
3 have proved unsuccessful.

4 **SECTION 139.** 48.427 (5) of the statutes is created to read:

5 48.427 (5) (cm) In placing an Indian child in a preadoptive placement following  
6 a transfer of guardianship and custody under sub. (3m) or (3p) or in placing an Indian  
7 child in sustaining care under sub. (4), the court or an agency specified in sub. (3m)  
8 (a) 1. to 4. or (am) shall comply with the order of placement preference under s. 48.028  
9 (7) (b). or, if applicable, (c)

10 **SECTION 140.** 48.428 (2) (a) of the statutes is amended to read:

11 48.428 (2) (a) Except as provided in par. (b), when a court places a child in  
12 sustaining care after an order under s. 48.427 (4), the court shall transfer legal  
13 custody of the child to the county department, the department, in a county having  
14 a population of 500,000 or more, or a licensed child welfare agency, transfer  
15 guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and  
16 place the child in the home of a licensed foster parent, licensed treatment foster  
17 parent, or kinship care relative with whom the child has resided for 6 months or  
18 longer. In placing an Indian child in sustaining care, the court shall comply with the  
19 order of placement preference under s. 48.028 (7) (b). Pursuant to such a placement,

20 this that licensed foster parent, licensed treatment foster parent, or kinship care  
21 relative shall be a sustaining parent with the powers and duties specified in sub. (3).

22 **SECTION 141.** 48.428 (2) (b) of the statutes is amended to read:

23 48.428 (2) (b) When a court places a child in sustaining care after an order  
24 under s. 48.427 (4) with a person who has been appointed as the guardian of the child  
25 under s. 48.977 (2), the court may transfer legal custody of the child to the county

or, if applicable, (c)

department, the department, in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster parent, licensed treatment foster parent, or kinship care relative with whom the child has resided for 6 months or longer. In placing an Indian child in sustaining care, the court shall comply with the order of placement preference under s. 48.028 (7) (b). Pursuant to such a placement, that licensed foster parent, licensed treatment foster parent, or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3). If the court transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), the court shall terminate the guardianship under s. 48.977.

**SECTION 142.** 48.43 (5) (bm) of the statutes is created to read:

48.43 (5) (bm) If the child is an Indian child, the court shall also provide notice of the hearing under par. (b) to the Indian child's tribe in the manner specified in s. 48.028 (4) (a). No hearing may be held under par. (b) until at least 10 days after receipt of notice of the hearing by the Indian child's tribe. On request of the Indian child's tribe, the court shall grant a continuance of up to 20 additional days to enable the tribe to prepare for the hearing.

**SECTION 143.** 48.43 (5) (c) of the statutes is amended to read:

48.43 (5) (c) Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c), except the determinations relating to the child's parents. The court may amend the order under sub. (1) to transfer the child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1. to 4. or (am) that consents to the transfer, if the court determines that the transfer is in the child's best interest. If an Indian child's guardianship and custody are

or, if applicable, (c)

§ 48.029 (7)

1 transferred under this paragraph, the agency consenting to the transfer shall comply  
2 with the order of placement preference specified in s. 48.028 (7) (b) in placing the  
3 child. If an order is amended, the agency that prepared the permanency plan shall  
4 revise the plan to conform to the order and shall file a copy of the revised plan with  
5 the court. Each plan filed under this paragraph shall be made a part of the court  
6 order.

7 **SECTION 144.** 48.43 (5m) of the statutes is amended to read:

8 48.43 (5m) Either the court or the agency that prepared the permanency plan  
9 shall furnish a copy of the original plan and each revised plan to the child, if he or  
10 she is 12 years of age or over, and to the child's foster parent, the child's treatment  
11 foster parent, or the operator of the facility in which the child is living, and, if the  
12 child is an Indian child, to the Indian child's tribe.

13 **SECTION 145.** 48.43 (6) (a) of the statutes is amended to read:

14 48.43 (6) (a) Judgments under this subchapter terminating parental rights are  
15 final and are appealable under s. 808.03 (1) according to the procedure specified in  
16 s. 809.107 and are subject to a petition for rehearing or a motion for relief only as  
17 provided in s. 48.46 (1m) and (2) and, in the case of an Indian child, s. 48.028 (5) (c)  
18 and (6). The attorney representing a person during a proceeding under this  
19 subchapter shall continue representation of that person by filing a notice of intent  
20 to appeal under s. 809.107 (2), unless the attorney has been previously discharged  
21 during the proceeding by the person or by the trial court.

22 **SECTION 146.** 48.43 (6) (c) of the statutes is amended to read:

23 48.43 (6) (c) In Except as provided in s. 48.028 (5) (c) and (6), in no event may  
24 any person, for any reason, collaterally attack a judgment terminating parental  
25 rights more than one year after the date on which the time limit for filing an appeal

1 from the judgment has expired, or more than one year after the date on which all  
2 appeals from the judgment, if any were filed, have been decided, whichever is later.

3 **SECTION 147.** 48.46 (2) of the statutes is amended to read:

4 48.46 (2) A parent who has consented to the termination of his or her parental  
5 rights under s. 48.41 or who did not contest the petition initiating the proceeding in  
6 which his or her parental rights were terminated may move the court for relief from  
7 the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any  
8 such motion shall be filed within 30 days after the entry of the judgment or order  
9 terminating parental rights, unless the parent files a timely notice of intent to  
10 pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall  
11 be filed within the time permitted by s. 809.107 (5). A motion under this subsection  
12 does not affect the finality or suspend the operation of the judgment or order  
13 terminating parental rights. Motions under this subsection or s. 48.028 (5) (c) or (6)  
14 and appeals to the court of appeals shall be the exclusive remedies for such a parent  
15 to obtain a new hearing in a termination of parental rights proceeding.

16 **SECTION 148.** 48.48 (8m) of the statutes is amended to read:

17 48.48 (8m) To enter into agreements with American Indian tribes in this state  
18 to implement the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC  
19 1911 to 1963.

20 **SECTION 149.** 48.485 of the statutes is amended to read:

21 **48.485 Transfer of tribal Indian children to department for adoption.**

22 If the department accepts guardianship or legal custody or both from an American  
23 Indian a tribal court under s. 48.48 (3m), the department shall seek a permanent  
24 adoptive placement for the child. If a permanent adoptive placement is not in  
25 progress within 2 years after entry of the termination of parental rights order by the



1 tribal court, the department may petition the tribal court to transfer legal custody  
2 or guardianship of the Indian child back to the Indian tribe, except that the  
3 department may not petition the tribal court to transfer back to ~~a~~ an Indian tribe  
4 legal custody or guardianship of ~~a~~ an Indian child who was initially taken into  
5 custody under s. 48.195 (1). (a)

6 **SECTION 150.** 48.63 (1) of the statutes is amended to read:

7 48.63 (1) Acting under court order or voluntary agreement, the child's parent  
8 ~~or~~, guardian, or Indian custodian, the department of health and family services, the  
9 department of corrections, a county department, or a child welfare agency licensed  
10 to place children in foster homes, treatment foster homes, or group homes may place  
11 a child or negotiate or act as intermediary for the placement of a child in a foster  
12 home, treatment foster home, or group home. Voluntary agreements under this  
13 subsection may not be used for placements in facilities other than foster, treatment  
14 foster, or group homes and may not be extended. A foster home or treatment foster  
15 home placement under a voluntary agreement may not exceed 180 days from the  
16 date on which the child was removed from the home under the voluntary agreement.  
17 A group home placement under a voluntary agreement may not exceed 15 days from  
18 the date on which the child was removed from the home under the voluntary  
19 agreement, except as provided in sub. (5). These time limitations do not apply to  
20 placements made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary  
21 agreements may be made only under this subsection and sub. (5) (b) and shall be in  
22 writing and shall specifically state that the agreement may be terminated at any  
23 time by the parent ~~or~~, guardian, or Indian custodian or by the child if the child's  
24 consent to the agreement is required. In the case of an Indian child who is placed  
25 under this subsection by the voluntary agreement of the Indian child's parent or

1 Indian custodian, the voluntary consent of the parent or Indian custodian to the  
2 placement shall be given as provided in s. 48.028 (5) (a). The child's consent to the  
3 agreement is required whenever the child is 12 years of age or older.

4 **SECTION 151.** 48.63 (4) of the statutes is amended to read:

5 48.63 (4) A permanency plan under s. 48.38 is required for each child placed  
6 in a foster home or treatment foster home under sub. (1). If the child is living in a  
7 foster home or treatment foster home under a voluntary agreement, the agency that  
8 negotiated or acted as intermediary for the placement shall prepare the permanency  
9 plan within 60 days after the date on which the child was removed from his or her  
10 home under the voluntary agreement. A copy of each plan shall be provided to the  
11 child if he or she is 12 years of age or over ~~and, to the child's parent or guardian, and,~~  
12 if the child is an Indian child, to the Indian child's Indian custodian and tribe. If the  
13 agency that arranged the voluntary placement intends to seek a court order to place  
14 the child outside of his or her home at the expiration of the voluntary placement, the  
15 agency shall prepare a revised permanency plan and file that revised plan with the  
16 court prior to the date of the hearing on the proposed placement.

17 **SECTION 152.** 48.63 (5) (b) of the statutes is amended to read:

18 48.63 (5) (b) If a child who is at least 14 years of age, who is a custodial parent,  
19 as defined in s. 49.141 (1) (b), or an expectant mother, and who is in need of a safe  
20 and structured living arrangement and the parent ~~or, guardian, or Indian custodian~~  
21 of the child consent, a child welfare agency licensed to place children in group homes  
22 may place the child or arrange the placement of the child in a group home described  
23 in s. 48.625 (1m). Before placing a child or arranging the placement of a child under  
24 this paragraph, the child welfare agency shall report any suspected abuse or neglect  
25 of the child as required under s. 48.981 (2). A voluntary agreement to place a child

1 in a group home described in s. 48.625 (1m) may be made only under this paragraph,  
2 shall be in writing, and shall specifically state that the agreement may be terminated  
3 at any time by the parent, guardian, Indian custodian, or child. In the case of an  
4 Indian child who is placed in a group home under this paragraph by the voluntary  
5 agreement of the Indian child's parent or Indian custodian, the voluntary consent of  
6 the parent or Indian custodian to the placement shall be given as provided in s.  
7 48.028 (5) (a). An initial placement under this paragraph may not exceed 180 days  
8 from the date on which the child was removed from the home under the voluntary  
9 agreement, but may be extended as provided in par. (d) 3. to 6. An initial placement  
10 under this paragraph of a child who is under 16 years of age on the date of the initial  
11 placement may be extended as provided in par. (d) 3. to 6. no more than once.

12 **SECTION 153.** 48.63 (5) (c) of the statutes is amended to read:

13 48.63 (5) (c) A permanency plan under s. 48.38 is required for each child placed  
14 in a group home under par. (b) and for any child of that child who is residing with that  
15 child. The agency that placed the child or that arranged the placement of the child  
16 shall prepare the plan within 60 days after the date on which the child was removed  
17 from his or her home under the voluntary agreement and shall provide a copy of the  
18 plan to the child ~~and, the child's parent or guardian, and, if the child is an Indian~~  
19 child, the Indian child's Indian custodian and tribe.

20 **SECTION 154.** 48.63 (5) (d) 3. of the statutes is amended to read:

21 48.63 (5) (d) 3. If the agency that has placed a child under par. (b) or that has  
22 arranged the placement of the child wishes to extend the placement of the child, the  
23 agency shall prepare a revised permanency plan for that child and for any child of  
24 that child who is residing with that child and submit the revised permanency plan  
25 or plans, together with a request for a review of the revised permanency plan or plans

1 and the child's placement, to the independent reviewing agency before the expiration  
2 of the child's placement. The request shall include a statement that an extension of  
3 the child's placement would be in the best interests of the child, together with reliable  
4 and credible information in support of that statement, a statement that the child and  
5 the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension of  
6 the child's placement, and a request that the independent reviewing agency approve  
7 an extension of the child's placement. On receipt of a revised permanency plan or  
8 plans and a request for review, the independent reviewing agency shall set a time and  
9 place for the review and shall advise the agency that placed the child or that arranged  
10 the placement of the child of the time and place of the review.

11 **SECTION 155.** 48.63 (5) (d) 4. of the statutes is amended to read:

12 48.63 (5) (d) 4. Not less than 10 days before the review, the agency that placed  
13 the child or that arranged the placement of the child shall provide a copy of the  
14 revised permanency plan or plans and the request for review submitted under subd.  
15 3. and notice of the time and place of the review to the child, the parent, guardian,  
16 and legal custodian of the child, ~~and~~ the operator of the group home in which the child  
17 is placed, and, if the child is an Indian child, the Indian child's Indian custodian and  
18 tribe, together with notice of the issues to be determined as part of the permanency  
19 plan review and notice of the fact that those persons may have the opportunity to be  
20 heard at the review by submitting written comments to that agency or the  
21 independent reviewing agency before the review or by participating at the review.

22 **SECTION 156.** 48.63 (5) (d) 5. of the statutes is amended to read:

23 48.63 (5) (d) 5. At the review, any person specified in subd. 4. may present  
24 information relevant to the issue of extension and information relevant to the  
25 determinations specified in s. 48.38 (5) (c). After receiving that information, the

independent reviewing agency shall make the determinations specified in s. 48.38 (5) (c) and determine whether an extension of the child's placement is in the best interests of the child and whether the child and the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension. If the independent reviewing agency determines that the extension is in the best interests of the child and that the child and the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension, the independent reviewing agency shall approve, in writing, an extension of the placement for a specified period of time not to exceed 6 months, stating the reason for the approval, and the agency that placed the child or that arranged the placement of the child may extend the child's placement for the period of time approved. If the independent reviewing agency determines that the extension is not in the best interests of the child or that the child and the parent ~~or~~, guardian, or Indian custodian of the child do not consent to the extension, the independent reviewing agency shall, in writing, disapprove an extension of the placement, stating the reason for the disapproval, and the agency that placed the child or that arranged the placement of the child may not extend the placement of the child past the expiration date of the voluntary placement unless the agency obtains a court order placing the child in the group home after the expiration date of the voluntary placement. Notwithstanding the approval of an extension under this subdivision, the child or the parent ~~or~~, guardian, or Indian custodian of the child may terminate the placement at any time during the extension period.

**SECTION 157.** 48.63 (5) (d) 6. of the statutes is amended to read:

48.63 (5) (d) 6. Within 30 days after the review, the agency that prepared the revised permanency plan or plans shall prepare a written summary of the determinations specified in s. 48.38 (5) (c) that were made under subd. 5. and shall

1 provide a copy of that summary to the independent reviewing agency, the child, the  
2 parent, guardian, and legal custodian of the child, and the operator of the group home  
3 in which the child was placed, and, if the child is an Indian child, the Indian child's  
4 Indian custodian and tribe.

5 **SECTION 158.** 48.83 (1) of the statutes is amended to read: (b)

6 48.83 (1) The Except as provided in s. 48.028 (3) (a), the court of the county  
7 where the proposed adoptive parent or child resides, upon the filing of a petition for  
8 adoption or for the adoptive placement of a child, has jurisdiction over the child until  
9 the petition is withdrawn, denied, or granted. Venue shall be in the county where  
10 the proposed adoptive parent or child resides at the time the petition is filed. The  
11 court may transfer the case to a court in the county in which the proposed adoptive  
12 parents reside.

13 **SECTION 159.** 48.831 (1r) of the statutes is created to read:

14 48.831 (1r) NOTICE. When a petition is filed under sub. (1m), the court shall  
15 provide notice of the fact-finding hearing under sub. (3) to all interested parties as  
16 provided in s. 48.27 (6). If the court knows or has reason to know that the child is  
17 an Indian child, the court shall provide notice to the Indian child's Indian custodian,  
18 if any, and tribe, if known, in the manner specified in s. 48.028 (4) (a). No hearing  
19 may be held under sub. (3) until at least 10 days after receipt of the notice by the  
20 Indian child's Indian custodian and tribe. On request of the Indian child's Indian  
21 custodian or tribe, the court shall grant a continuance of up to 20 additional days to  
22 enable the requester to prepare for the hearing.

23 **SECTION 160.** 48.831 (4) (cm) of the statutes is created to read:

24 48.831 (4) (cm) If the child is an Indian child who is in the custody of an Indian  
25 custodian, the court may not remove the child from the custody of the Indian

or, if applicable, (c)

1 custodian under par. (c) unless the court finds by clear and convincing evidence,  
2 including the testimony of one or more qualified expert witnesses, that continued  
3 custody of the Indian child by the Indian custodian is likely to result in serious  
4 emotional or physical damage to the child under s. 48.028 (4) (d) 1. and that the  
5 department, county department, or child welfare agency has made active efforts  
6 under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that those  
7 efforts have proved unsuccessful. In placing an Indian child following a transfer of  
8 guardianship and custody under par. (b) or (c), the custodian appointed under par.  
9 (b) or (c) shall comply with the order of placement preference under s. 48.028 (7) (b).

10 **SECTION 161.** 48.833 of the statutes is amended to read:

or, if applicable, (c)

11 **48.833 Placement of children for adoption by the department, county**  
12 **departments and child welfare agencies.** The department, a county department  
13 under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may  
14 place a child for adoption in a licensed foster home or a licensed treatment foster  
15 home without a court order if the department, county department, or child welfare  
16 agency is the guardian of the child or makes the placement at the request of another  
17 agency that is the guardian of the child. In placing an Indian child for adoption under  
18 this section, the department, county department, or child welfare agency shall  
19 comply with the order of placement preference under s. 48.028 (7) (a). When a child  
20 is placed under this section in a licensed foster home or a licensed treatment foster  
21 home for adoption, the department, county department, or child welfare agency  
22 making the placement shall enter into a written agreement with the proposed  
23 adoptive parent, which shall state the date on which the child is placed in the licensed  
24 foster home or licensed treatment foster home for adoption by the proposed adoptive  
25 parent.

or, if applicable, (c)

**SECTION 162.** 48.833 of the statutes, as affected by 2005 Wisconsin Acts 293 and 2007 Wisconsin Act .... (this act), is repealed and recreated to read:

**48.833 Placement of children for adoption by the department, county departments, and child welfare agencies.** The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order if the department, county department, or child welfare agency is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child and if the proposed adoptive parents have completed the preadoption preparation required under s. 48.84 (1) or the department, county department, or child welfare agency determines that the proposed adoptive parents are not required to complete that preparation. In placing an Indian child for adoption under this section, the department, county department, or child welfare agency shall comply with the order of placement preference under s. 48.028 (7) (a). When a child is placed under this section in a licensed foster home or a licensed treatment foster home for adoption, the department, county department, or child welfare agency making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the proposed adoptive parent.

**SECTION 163.** 48.837 (2) (e) of the statutes is created to read:

**48.837 (2) (e)** If the child is an Indian child, the names and addresses of the Indian child's Indian custodian, if any, and tribe, if known.

**SECTION 164.** 48.837 (4) (c) of the statutes is amended to read:



or Tribal social services department

1 48.837 (4) (c) Shall, when the petition has been filed under sub. (1), order the  
2 department or a county department under s. 48.57 (1) (e) or (hm) to investigate the  
3 proposed adoptive placement, to interview each petitioner, to provide counseling if  
4 requested, and to report its recommendation to the court at least 5 days before the  
5 hearing on the petition. If a licensed child welfare agency (has investigated the  
6 proposed adoptive placement and interviewed the petitioners, the court may accept  
7 a report and recommendation from the child welfare agency or Tribal social services department in place of the  
8 court-ordered report required under this paragraph. In reporting its  
9 recommendations under this paragraph with respect to an Indian child, the  
10 department, a county department, ~~and~~ child welfare agency, shall comply with the  
11 order of placement preference under s. 48.028 (7) (a) or, if applicable, (c)

12 SECTION 165. 48.837 (4) (d) of the statutes is amended to read:

13 48.837 (4) (d) May, at the request of a petitioning parent, or on its own motion  
14 after ordering the child taken into custody under s. 48.19 (1) (c), order the  
15 department or a county department under s. 48.57 (1) (e) or (hm) to place the child,  
16 pending the hearing on the petition, in any home licensed under s. 48.62 except the  
17 home of the proposed adoptive parents or a relative of the proposed adoptive parents.  
18 In placing an Indian child under this paragraph, the department or county  
19 department shall comply with the order of placement preference under s. 48.028 (7)

20 (b) or, if applicable, (c)

s. 48.028 (7)

21 SECTION 166. 48.837 (6) (c) of the statutes is amended to read:

22 48.837 (6) (c) After the hearing on the petition under sub. (2), the court shall  
23 make findings on the allegations of the petition and the report ordered under sub.  
24 (4) (c) and make a conclusion as to whether placement in the home is in the best  
25 interest of the child. In determining whether placement of an Indian child in the

or in the case of an Indian child, the Tribal social services department or the Indian child welfare agency

or, if applicable (cc)

(use 4 times)

1 home is in the best interest of the Indian child, the court shall comply with the order  
2 of placement preference under s. 48.028 (7) (a).

3 **SECTION 167.** 48.85 (1) of the statutes is amended to read:

4 48.85 (1) At least 10 days prior to the hearing, the guardian shall file its  
5 recommendation with the court. In making a recommendation under this subsection (use twice)  
6 with respect to an Indian child, the guardian shall comply with the order of  
7 placement preference under s. 48.028 (7) (a).

8 **SECTION 168.** 48.88 (2) (b) of the statutes is amended to read:

9 48.88 (2) (b) The agency making the investigation shall file its report with the  
10 court at least 10 days before the hearing unless the time is reduced for good cause  
11 shown by the petitioner. In reporting on an investigation of the proposed adoptive  
12 home of an Indian child, the agency shall comply with the order of placement  
13 preference under s. 48.028 (7) (a). The report shall be part of the record of the  
14 proceedings.

15 **SECTION 169.** 48.89 (1) of the statutes is amended to read:

16 48.89 (1) The recommendation of the department is required for the adoption  
17 of a child if the child is not under the guardianship of a county department under s.  
18 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5). In making a  
19 recommendation under this subsection with respect to an Indian child, the  
20 department shall comply with the order of placement preference under s. 48.028 (7)  
21 (a).

22 **SECTION 170.** 48.91 (3) of the statutes is amended to read:

23 48.91 (3) If after the hearing and a study of the report required by s. 48.88 and  
24 the recommendation required by s. 48.841 or 48.89, the court is satisfied that the  
25 necessary consents or recommendations have been filed and that the adoption is in

Insert  
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or tribal social services department

or, if applicable, (c)

the best interests of the child, the court shall make an order granting the adoption.

In determining whether the adoption is in the best interests of an Indian child, the

court shall comply with the order of placement preference under s. 48.028 (7) (a). The

order may change the name of the minor to that requested by petitioners.

**SECTION 171.** 48.93 (1d) of the statutes is amended to read:

48.93 (1d) All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file and may not be disclosed except under sub. (1g) or, (1r), or (1v), s. 46.03 (29), 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or by order of the court for good cause shown.

**SECTION 172.** 48.93 (1v) of the statutes is created to read:

48.93 (1v) (a) At the time a court enters an order granting adoption of an Indian child, the court shall provide the U.S. secretary of the interior with the information specified in s. 48.028 (9) (a) and (b).

(b) At the request of an Indian adoptee who is 18 years of age or older, the court that entered the order granting adoption of the adoptee shall provide the adoptee with the information specified in s. 48.028 (9) (c).

**SECTION 173.** 48.977 (2) (g) of the statutes is created to read:

48.977 (2) (g) In the case of an Indian child, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and that the agency primarily responsible for providing services to the Indian child under a court order has made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

**SECTION 174.** 48.977 (4) (a) 1. of the statutes is amended to read:

1        48.977 (4) (a) 1. The child or the child's guardian or, legal custodian, or Indian  
2        custodian.

3        **SECTION 175.** 48.977 (4) (b) 6. of the statutes is amended to read:

4        48.977 (4) (b) 6. A statement of whether the child may be subject to the federal  
5        ~~Indian child welfare act~~ Child Welfare Act, 25 USC 1911 to 1963, and, if the child may  
6        be subject to that act, the names and addresses of the child's Indian custodian, if any,  
7        and Indian tribe, if known.

8        **SECTION 176.** 48.977 (4) (b) 7. of the statutes is created to read:

9        48.977 (4) (b) 7. If the child is or may be an Indian child, reliable and credible  
10       information showing that continued custody of the child by the child's parent or  
11       Indian custodian is likely to result in serious emotional or physical damage to the  
12       child under s. 48.028 (4) (d) 1. and reliable and credible information showing that the  
13       person who took the child into custody and the intake worker have made active  
14       efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that  
15       those efforts have proved unsuccessful.

16       **SECTION 177.** 48.977 (4) (c) 1. j. of the statutes is created to read:

17       48.977 (4) (c) 1. j. If the child is an Indian child, the Indian child's Indian  
18       custodian, if any, and tribe, if known.

19       **SECTION 178.** 48.977 (4) (c) 2. of the statutes is amended to read:

20       48.977 (4) (c) 2. Service Except as provided in subd. 2m., service shall be made  
21       by 1st class mail at least 7 days before the hearing or by personal service at least 7  
22       days before the hearing or, if with reasonable diligence a party specified in subd. 1.  
23       cannot be served by mail or personal service, service shall be made by publication of  
24       a notice published as a class 1 notice under ch. 985. In determining which newspaper  
25       is likely to give notice as required under s. 985.02 (1), the petitioner shall consider

1 the residence of the party, if known, or the residence of the relatives of the party, if  
2 known, or the last-known location of the party.

3 **SECTION 179.** 48.977 (4) (c) 2m. of the statutes is created to read:

4 48.977 (4) (c) 2m. If the petitioner knows or has reason to know that the child  
5 is an Indian child, service under subd. 2. to the Indian child's parent shall be provided  
6 in the manner specified in s. 48.028 (4) (a). In like manner, the petitioner shall also  
7 provide service to the Indian child's Indian custodian and tribe. No hearing may be  
8 held under par. (cm) until at least 10 days after receipt of service by the Indian child's  
9 parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian  
10 custodian, or tribe, the court shall grant a continuance of up to 20 additional days  
11 to enable the requester to prepare for the hearing.

12 **SECTION 180.** 48.977 (4) (d) of the statutes is amended to read:

13 48.977 (4) (d) *Fact-finding hearing.* The court shall hold a fact-finding hearing  
14 on the petition on the date set by the court under par. (cm) 3., at which any party may  
15 present evidence relevant to the issue of whether the conditions specified in sub. (2)  
16 (a) to ~~(f)~~ (g) have been met. If the court, at the conclusion of the fact-finding hearing,  
17 finds by clear and convincing evidence that the conditions specified in sub. (2) (a) to  
18 ~~(f)~~ (g) have been met, the court shall immediately proceed to a dispositional hearing  
19 unless an adjournment is requested. If a party requests an adjournment, the court  
20 shall set a date for the dispositional hearing which allows reasonable time for the  
21 parties to prepare but is no more than 30 days after the fact-finding hearing.

22 **SECTION 181.** 48.977 (4) (g) 4. of the statutes is created to read:

23 48.977 (4) (g) 4. If the child is an Indian child, the order of placement preference  
24 under s. 48.028 (7) (b) *or, if applicable (c)* **S. 48.028 (1)**

25 **SECTION 182.** 48.978 (2) (b) 11. of the statutes is amended to read:

1           48.978 (2) (b) 11. A statement of whether the child may be subject to the federal  
2           Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the child may be subject to  
3           that act, the names and addresses of the child's Indian custodian, if any, and Indian  
4           tribe, if known.

5           **SECTION 183.** 48.981 (1) (cs) of the statutes is repealed.

6           **SECTION 184.** 48.981 (1) (i) of the statutes is amended to read:

7           48.981 (1) (i) "Tribal agent" means the person designated under 25 CFR 23.12  
8           by an Indian tribe or band to receive notice of involuntary child custody proceedings  
9           under the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC 1901  
10          to 1963.

11          **SECTION 185.** 48.981 (3) (bm) (intro.) of the statutes is amended to read:

12          48.981 (3) (bm) *Notice of report to Indian tribal agent.* (intro.) In a county  
13          which has wholly or partially within its boundaries a ~~federally recognized Indian~~  
14          reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a  
15          county department which receives a report under par. (a) pertaining to a child or  
16          unborn child knows or has reason to know that the child is an Indian child who  
17          resides in the county or that the unborn child is an Indian unborn child whose  
18          expectant mother resides in the county, the county department shall provide notice,  
19          which shall consist only of the name and address of the child or expectant mother and  
20          the fact that a report has been received about that child or unborn child, within 24  
21          hours to one of the following:

22          **SECTION 186.** 48.981 (3) (bm) 1. of the statutes is amended to read:

23          48.981 (3) (bm) 1. If the county department knows ~~with which the Indian tribe~~  
24          ~~or band of which~~ the child is affiliated a member, or ~~with which the Indian tribe or~~  
25          ~~band in which~~ the unborn child, when born, may be eligible for affiliation

1 membership, and it is a Wisconsin Indian tribe ~~or band~~, the tribal agent of that tribe  
2 ~~or band~~.

3 **SECTION 187.** 48.981 (3) (bm) 2. of the statutes is amended to read:

4 48.981 (3) (bm) 2. If the county department does not know ~~with which the~~  
5 Indian tribe ~~or band of which~~ the child is affiliated a member, or ~~with which the~~  
6 Indian tribe ~~or band in which~~ the unborn child, when born, may be eligible for  
7 ~~affiliation~~ membership, or the child or expectant mother is not ~~affiliated with a~~  
8 member of a Wisconsin Indian tribe ~~or band~~, the tribal agent serving the reservation  
9 or Ho-Chunk service area where the child or expectant mother resides.

10 **SECTION 188.** 48.981 (7) (a) 10m. of the statutes is amended to read:

11 48.981 (7) (a) 10m. A tribal court, or other adjudicative body authorized by a  
12 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises  
13 jurisdiction over children and unborn children alleged to be in need of protection or  
14 services for use in proceedings in which abuse or neglect of the child who is the  
15 subject of the report or record or abuse of the unborn child who is the subject of the  
16 report or record is an issue.

17 **SECTION 189.** 48.981 (7) (a) 10r. of the statutes is amended to read:

18 48.981 (7) (a) 10r. A tribal court, or other adjudicative body authorized by a  
19 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises  
20 jurisdiction over children alleged to be in need of protection or services for use in  
21 proceedings in which an issue is the substantial risk of abuse or neglect of a child  
22 who, during the time period covered by the report or record, was in the home of the  
23 child who is the subject of the report or record.

24 **SECTION 190.** 48.981 (7) (a) 11m. of the statutes is amended to read:

1 48.981 (7) (a) 11m. An attorney representing the interests of an Indian tribe  
2 or band in proceedings under subd. 10m. or 10r., of an Indian child in proceedings  
3 under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd.  
4 10m.

5 SECTION 191. 822.015 of the statutes is amended to read:

6 **822.015 Custody of Indian children.** The Indian child welfare act federal  
7 Indian Child Welfare Act, 25 USC 1911 to 1963, supersedes the provisions of this  
8 chapter in any child custody proceeding governed by that act, except that in any case  
9 in which this chapter provides a higher standard of protection for the rights of an  
10 Indian child's parent or Indian custodian than the rights provided under that act, the  
11 court shall apply the standard under this chapter.

12 SECTION 192. 938.02 (8d) of the statutes is created to read:

13 938.02 (8d) "Indian" means any person who is a member of an Indian tribe or  
14 who is an Alaska native and a member of a regional corporation, as defined in 43 USC  
15 1606.

16 SECTION 193. 938.02 (8g) of the statutes is created to read:

17 938.02 (8g) "Indian juvenile" means an unmarried person who is under 18  
18 years of age and who is one of the following:

19 (a) A member of an Indian tribe.

20 (b) Eligible for membership in an Indian tribe and is the biological child of a  
21 member of an Indian tribe.

22 SECTION 194. 938.02 (8m) of the statutes is created to read:

23 938.02 (8m) "Indian juvenile's tribe" means one of the following:

24 (a) The Indian tribe in which an Indian juvenile is a member or eligible for  
25 membership.



(b) In the case of an Indian juvenile who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian juvenile has the more significant contacts.

**SECTION 195.** 938.02 (8p) of the statutes is created to read:

938.02 (8p) "Indian custodian" means an Indian person who has legal custody of an Indian juvenile under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the juvenile.

**SECTION 196.** 938.02 (8r) of the statutes is created to read:

938.02 (8r) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of Indian status, including any Alaska native village, as defined in 43 USC 1602 (c).

**SECTION 197.** 938.02 (9m) of the statutes is renumbered 938.02 (8b).

**SECTION 198.** 938.02 (10m) of the statutes is amended to read:

938.02 (10m) "Juvenile", when used without further qualification, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "juvenile" does not include a person who has attained 17 years of age.

**SECTION 199.** 938.02 (12m) of the statutes is amended to read:

938.02 (12m) "Off-reservation trust land" means land in this state that is held in trust by the federal government for the benefit of a an Indian tribe or ~~an American Indian individual~~ and that is located outside the boundaries of ~~a~~ an Indian tribe's reservation.